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OFFICE OF APPEALS AND DISPUTE RESOLUTION

February 20, 2008

In the Matter of Richard Cretarolo

Docket No. WET-2007-002
DEP File Nos. 28-1854
Gloucester

RECOMMENDED FINAL DECISION
ON RECONSIDERATION

The Petitioners, a ten-citizens group with an authorized representative of Stevan Goldin of 14 Hodgkins Street in Gloucester (“Petitioners”), had filed an adjudicatory hearing claim on November 6, 2007 with the Office of Appeals and Dispute Resolution (“OADR”) with regard to a “Proposed subdivision of Richard Cretalaro (sic) at 2-14 Bass Ave., Gloucester, file no. 28-1854.” After refusing to participate in the adjudicatory proceedings as required by the written rules applicable to that process at 310 CMR 10.05(7)(j) and 310 CMR 1.00 et seq., Petitioners now move for reconsideration of the Commissioner’s Final Decision in this matter and for reconsideration of the decision to deny transfer of this matter to the Division of Administrative Law Appeals (“DALA”).

Under 310 CMR 1.01(14)(e), Petitioners have a heavy burden; they must demonstrate that a finding of fact or conclusion of law on which the final decision was based is “clearly



erroneous.” Petitioners make no new arguments and present no new evidence, but they merely reiterate the arguments that they made in a prior motion to transfer this matter to DALA, in particular, that the OADR process is not impartial and that there are no written rules. In addition to being a repeated argument that was already considered, it is not a correct argument. There are written adjudicatory proceeding rules that were sent to Petitioners by the Presiding Officer in this matter along with the governing Commissioner’s Directive. The Presiding Officer also gave Petitioners multiple opportunities to participate and be heard in this matter, even after Petitioners missed deadlines and failed to comply with those rules. Finally, “[w]here a motion [for reconsideration] repeats matters adequately considered in the final decision, renews claims or arguments that were previously raised, considered and denied,...it may be summarily denied.” 310 CMR 1.01(14)(e). Therefore, the motion for reconsideration should be denied.

NOTICE- RECOMMENDED FINAL DECISION ON RECONSIDERATION

This decision is a Recommended Final Decision of the Presiding Officer. It has been transmitted to the Commissioner for her Final Decision in this matter. This decision is therefore not a Final Decision subject to reconsideration under 310 CMR 1.01(14)(e), and may not be appealed to Superior Court pursuant to M.G.L. c. 30A. The Commissioner’s Final Decision is subject to court appeal and will contain a notice to that effect.

Because this matter has now been transmitted to the Commissioner, no party shall file a motion to renew or reargue this Recommended Final Decision or any part of it, and no party shall communicate with the Commissioner’s office regarding this decision unless the Commissioner, in her sole discretion, directs otherwise.

This final document copy is being provided to you electronically by the
Department of Environmental Protection. A signed copy of this document
is on file at the DEP office listed on the letterhead.

Laurel A. Mackay

Presiding Officer